

Message Text

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PAGE 01 HONG K 02879 01 OF 02 210144Z

67

ACTION SS-25

INFO OCT-01 ISO-00 /026 W

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P 190900Z MAR 75

FM AMCONSUL HONG KONG

TO SECSTATE WASHDC PRIORITY 4228

LIMITED OFFICIAL USE SECTION 1 OF 2 HONG KONG 2879

EXDIS

FOR CHASE, DIRECTOR, OFFICE OF SPECIAL CONSULAR SERVICES,
FROM CROSS

E.O. 11652: N/A

TAGS: CGEN (CHAMBLEE, L.)

SUBJ: REQUEST FOR JUDICAL ASSISTANCE BY MR. CHAMBLEE, JUSTICE
DEPARTMENT ATTORNEY

REF: A) STATE 056665 (STADIS) B) HONG KONG 2678 (STADIS)

SUMMARY: FOLLOWING IS A DETAILED ACCOUNT OF LEGAL PROBLEMS
INVOLVED IN THIS CASE. REPORT EMPHASIZES NEED FOR RAPID
COORDINATION AND CENTRALIZED DIRECTION IN WASHINGTON.

ACTION REQUESTED: PLEASE RELAY THIS MESSAGE VERBATIM TO
APPROPRIATE DOJ AUTHORITY. END SUMMARY.

1. THIS CASE INVOLVES THE ALLEGED EMBEZZLEMENT OF
APPROXIMATELY 4.4 MILLION DOLLARS FROM THE DEPARTMENT OF
DEFENSE VIA THE FRAUDENTLY CLAIMED PURCHASE OF PETROLEUM
PRODUCTS FOR THE ARMED FORCES OF THE REPUBLIC OF VIETNAM
BY AN EMPLOYEE OR EMPLOYEES OF THE U.S. DEFENSE ATTACHE
OFFICE, SAIGON. IN SUMMARY, THE METHOD BY WHICH THIS
EMBEZZLEMENT WAS EFFECTED WAS THAT AN EMPLOYEE WHO HAD
UNCHECKED AUTHORITY TO AUTHORIZE PAYMENT FROM A DOD
ACCOUNT FOR PETROLEUM PRODUCTS DELIVERED TO THE RVN
PRODUCED FRAUDULENT INVOICES FOR PRODUCTS NEVER RECEIVED
AND DIREDTED PAYMENT TO VARIOUS BANK ACCOUNTS WHICH WERE
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PAGE 02 HONG K 02879 01 OF 02 210144Z

UNDER HIS CONTROL OR UNDER THE CONTROL OF ASSOCIATES AND

VIA WHICH HE APPROPRIATED THESE FUNDS TO HIS PERSONAL USE. THESE FUNDS WERE AMONG SOME \$135,000,000 WHICH THE SUBJECT DIRECTED TO BE DISBURSED WHILE IN HIS POSITION WITH THE DAO, SAIGON.

2. THE BANKS UTILIZED WERE THREE HONG KONG BANKS, THE FIRST NATIONAL CITY BANK, INCORPORATED IN NEW YORK; THE CHARTERED BANK, INCORPORATED IN LONDON, AND THE HANG SENG BANK OF HONG KONG.

3. THE U.S. GOVERNMENT IS INVESTIGATING THIS CASE WITH THREE OBJECTIVES IN MIND: THE FREEZING OF EMBEZZLED FUNDS SO THAT THEY CAN BE RECOVERED; THE CRIMINAL PROSECUTION OF THE U.S CITIZEN-SUBJECT IN A U.S. COURT, WHICH WILL ALSO INVOLVE THE EXTRADITION OF THE SUBJECT FROM A FOREIGN COUNTRY; AND THE PROSECUTION OF NON-U.S. CITIZEN ACCOMPLICES BY FOREIGN AUTHORITIES WHICH HAVE JURISDICTION OVER THEM AND ANY OFFENSE THEY MAY HAVE COMMITTED IN THEIR HOME COUNTRY DURING THE COURSE OF THE EMBEZZLEMENT.

4. THE CLOSE COORDINATION OF THESE THREE ACTIONS REQUIRES THE CLOSEST OF COOPERATION AMONG U.S. AUTHORITIES, AND AMONG U.S. AUTHORITIES, FOREIGN POLICE, AND FOREIGN ATTORNEYS REPRESENTING U.S. GOVERNMENT INTERESTS AT THE SUSPECTED SITE OF THE EMBEZZLED FUNDS. ANY ACTION ON THE PART OF ANY ONE OF THESE PARTICIPANTS WHICH IS SUBSTANTIALLY EARLIER THAN ACTION BY THE OTHER PARTIES MAY SERVE TO PROVIDE NOTICE TO THE SUBJECT WHICH COULD RESULT IN THEIR FLEEING TO AN AREA IN WHICH ARREST AND EXTRADITION WOULD BE MUCH MORE DIFFICULT, IF NOT IMPOSSIBLE, AND IN THE MOVEMENT OF THE EMBEZZLED MONEY SO IT IS UNRECOGNIZABLE AND BEYOND THE REACH OF THE U.S. GOVERNMENT IN A RECOVERY ACTION.

5. U.S. GOVERNMENT RECORDS AND RECORDS MADE AVAILABLE BY ONE OF THE PARTICIPANTS IN THE EMBEZZLEMENT (WHO MAY HAVE PARTICIPATED WITH OR WITHOUT GUILTY KNOWLEDGE) PRESENT A PRIMA FACIE CASE WHICH MIGHT SUPPORT A CRIMINAL CONVICTION, A CIVIL JUDGEMENT FOR CONVERSION, AND AN INJUNCTION TO FREEZE FUNDS. BUT WE DO NOT KNOW WHERE THE EMBEZZLED

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PAGE 03 HONG K 02879 01 OF 02 210144Z

FUNDS ARE AT THIS POINT. FROM THE ABOVE RECORDS WE KNOW THE THREE HONG KONG BANKS WHICH WERE USED DURING THE EMBEZZLEMENT, BUT WHETHER THE EMBEZZLED MONEY IS STILL IN THOSE BANKS (IN THE SAME ACCOUNTS OR IN OTHER ACCOUNTS), IN OTHER HONG KONG BANKS, OR EVEN IN HONG KONG IS UNKNOWN. FOR THAT, BANK RECORDS OF THE U.S. CITIZEN - SUBJECT SIMMONS, AND THE FOREIGN CITIZEN-SUBJECTS, THE WONGS, AND THEIR COMPANIES WILL BE REQUIRED.

6. THE DIFFICULTY IN PROCEEDING WITH THE THREE ACTIONS
IN THIS CASE, VIZ., A CIVIL ACTION TO FREEZE FUNDS, A U.S.
CRIMINAL INVESTIGATION, ISSUANCE OF ARREST WARRANT AND
EXTRADITION OF SIMMONS; AND THE HONG KONG POLICE INVESTI-
FATION OF THE WONGS IS BRIEFLY THIS: ANY ONE OF THESE
ACTIONS COULD SERVE TO PROVIDE NOTICE TO THE SUBJECTS AND
RESULT IN THEIR FLIGHT FROM HONG KONG TO AN AREA WHERE
EXECUTION OF THE ARREST WARRANT AND EXTRADITION
IS NOT
FEASIBLE AND/OR THE MOVEMENT OF THE EMBEZZLED FUNDS BEYOND
U.S. GOVERNMENT'S REACH.

A. THE FILING OF A CIVIL ACTION TO FREEZE FUNDS
MUST BE DIRECTED TO THE BANKS WHERE THE MONEY IS BELIEVED
TO BE LOCATED, AND NOTICE MUST BE GIVEN TO THE DEFENDANTS
THAT SUCH A FREEZING ACTION HAS OCCURRED. AS NOTED, THE
EMBEZZLED MONEY MAY OR MAY NOT BE IN THE THREE KNOWN ",,
AND FILING OF THE CIVIL ACTION WOULD SERVE TO NOTIFY THEM
THAT THE U.S. GOVERNMENT IS MOVING AGAINST THEM WHICH MAY
ALLOW THEM TO FLEE AND/OR TO MOVE A LARGE AMOUNT OF
EMBEZZLED MONEY FROM A BANK OTHER THAN THE ONE'S SERVED.
THIS IS ESPECIALLY SO IN THE CASE OF THE WONGS WHO, BESIDES
THE WONG INTERNATIONAL TRADING CO., LTD., VIA WHICH THEY
PARTICIPATED IN THE EMBEZZLEMENT, ARE ALSO AFFILIATED WITH
APPROXIMATELY TWELVE OTHER COMPANIES, WHICH MAY HAVE BANK
ACCOUNTS AT MANY BANKS OTHER THAN THE THREE KNOWN BANKS.
THEY COULD DIFFUSE THE EMBEZZLED FUNDS THROUGHOUT THESE
COMPANIES AND THEIR BANKS ACCOUNTS SO THAT IT WOULD BE
UNRECOGNIZABLE.

B. IF AN ARREST WARRANT WERE ISSUED FOR SIMMONS,
AND HE WAS ARRESTED IN HONG KONG AND PROCEEDINGS INITIATED
FOR HIS EXTRADITION, WITHOUT SIMULTANEOUS CIVIL ACTION TO
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PAGE 04 HONG K 02879 01 OF 02 210144Z

FREEZE FUNDS, SIMMONS' ASSOCIATES OR WIFE COULD MOVE THE
FUNDS BEYOND U.S. GOVERNMENT'S REACH, AND THE WONG COULD
DIFFUSE THEIR PORTION AMONG THEIR AFFILIATED COMPANIES.

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PAGE 01 HONG K 02879 02 OF 02 200528Z

12

ACTION SS-25

INFO OCT-01 ISO-00 /026 W

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P 190900Z MAR 75

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LIMITED OFFICIAL USE SECTION 2 OF 2 HONG KONG 2879

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FOR CHASE, DIRECTOR OFFICE OF SPECIAL CONSULAR SERVICES,
FROM CROSS

C. THE HONG KONG POLICE CANNOT OBTAIN A SERCH WARRANT
TO EXAMINE BANK ACCOUNTS UNLESS THERE IS REASON TO
BELIEVE HONG KONG LAW HAS BEEN VIOLATED. WHILE THERE
IS SOME LIKELIHOOD THAT THE WONGS HAVE VIOLATED HONG KONG
LAW BY RECEIVING STOLEN PROPERTY, AND THIS WOULD THUS
ALLOW THE POLICE TO EXAMINE THEIR BANK RECORDS, THERE IS
A SERIOUS QUESTION AS TO WHETHER SIMMONS HAS VIOLATED
HONG KONG LAW MERELY BY UTILIZING HONG KONG BANKS TO
RECIEVE THE EMBEZZLED FUNDS. AS NOTED EARLIR IN THIS
CABLE, THERE WILL BE SOME DIFFICULTY IN SUSTAINING AN
INJUNCTION FOR FREEZING OF FUNDS UNLESS WE CAN GAIN ACCESS
TO BOTH SIMMONSJ AND WONGS' BANK RECORDS IN ORDER TO
TRACE AND HOPEFULLY IDENTIFY THE EMBEZZLED FUNDS. THE
HONG KONG POLICE PLAN TO PRESENT THEIR CASE AGAINST
SIMMONS AND WONGS TO THE HONG KONG GOVERNMENT'S LEGAL DEPARTMENT
FOR AN OPINION AS TO WHETHER THEY HAVE VIOLATED HONG
KONG LAW. SIMMONS OBTAINED, IN HONG KONG, TWO BLANK
INVOICES FROM THE WONGS WHICH HE UTILIZED IN THE EMBEZZLE-
MENT SCHEME, AND THIS MAY CONSTITUE AN ACT OF CONSPIRACY
COMMITEDD IN HONG KONG. HOEPFULLY THE LEGAL DEPARTMENT
WILL RENDER AN AFFIRMATIVE OPINION IN BOTH CASES, BECAUSE IF WONGS
WERE MERELY USED AS A CONDUIT FOR THE EMBEZZLED FUNDS
THEIR BANK RECORDS, WHILE OF CNSIDERABLE VALUE, WILL NOT
BE CONCLUSIVE AND WE WILL NEED SIMMONS' BANK RECORDS. IT
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PAGE 02 HONG K 02879 02 OF 02 200528Z

IS ALSO IMPORTANT THAT THE HONG KONG POLICE NOT PROCEED
WITH THEIR CRIMINAL INVESTIGATION, SPECIFICALLY
EXECUTION OF A SEARCH WARRANT AGAINST WONGS OR SIMMONS
UNTIL THE U.S. GOVERNMENT IS PREAPRED TO FILE A CIVIL
ACTION TO FREEZE AND TO REQUEST EXECUTION OF AN ARREST
WARRANT AGAINST SIMMONS, SINCE A LEAK FROM THE BANKS THAT

THIS INVESTIGATION IS GOING ON MAY ALSO RESULT IN FLIGHT
OF THE DEFENDANTS AND MOVEMENT OF FUNDS IF THEY ARE IN
BANKS OTHER THAN THE ONES SERVED WITH THE SERACH WARRANT.

7. ACTION TAKEN AT HONG KONG HAS BEEN AS FOLLOWS:

THE PRELIMINARY ADVICE AS TO HOW TO PROCEED WITH THE CIVIL ACTION OF FREEZING HAS BEEN OBTAINED. THE ATTORNEY IS GEORGE STEVENSON, THE SECOND RANKING PARTNER IN ONE OF THE LARGEST AND MOST RESPECTED LAW FIRMS IN HONG KONG, JOHNSON, STOKES AND MASTER. HE HAS ADVISED THAT FUNDS, IF IDENTIFIABLE, AND IF THE BANKS IN WHICH THEY ARE LOCATED CAN BE IDENTIFIED, CAN BE FROZEN EX PARTE IMMEDIATELY UPON FILING AND SERVICE ON THE BANK(S); NOTICES WILL THEN BE GIVEN TO THE SUBJECTS-- CLIENTS OF THE BANK ALLOWING THEM TO COME INTO COURT TO CONTEST THE FREEZING INJUNCTION.

9. AS NOTED ABOVE, THE FACT THAT WE DO NOT DEFINITELY KNOW THE BANKS, IF ANY, IN HONG KONG WHICH HOLD THE EMBEZZLED FUNDS PRESENTS SOME PROBLEMS. STEVENSON'S FEE IS ALMOST IMPOSSIBLE TO DETERMINE AT THIS POINT. IF THE DEFENDANTS DO NOT CONTEST THE FREEZING ACTION HIS FEE WILL BE MINIMAL. IF THEY CONTEST BUT SETTLE WITHOUT TRIAL IT WILL BE SOMEWHAT MORE. IF THEY GO TO TRIAL THIS WILL REQUIRE THE RETENTION OF A BARRISTER WHICH WILL BE YET MORE. IF THE EMBEZZLED FUNDS ARE NOT LOCATED IN THE FIRST BANKS SERVED, AND ACTION IS REQUIRED AGAINST OTHER BANKS, OR IF U.S. GOVERNMENT ATTEMPTS TO TRACE THE EMBEZZLED FUNDS THROUGHOUT WONGS AND THEIR AFFILIATES, AND ALL OF THE BANK ACCOUNTS WHICH MIGHT THUS BE INVOLVED, THE NUMBER OF CIVIL ACTIONS BECOMES COMPOUNDED AND THE FEE WILL BE PROPORTIONATELY INCREASED. STEVENSON PROVIDED A BALL PARK FIGURE OF HK \$1,000- \$50,000 (US \$220- US \$11,000). AN INDICATOR OF HIS FEE IS THAT FOR A TWO HOUR CONFERENCE IN WHICH HE WAS BRIEFED ON THE ELEMENTS OF THIS CASE, AND FOR SOME LEGAL RESEARCH CONDUCTED BY HIM THEREAFTER, HE

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PAGE 03 HONG K 02879 02 OF 02 200528Z

INTENDS TO CHARGE HK \$1,000 (US \$220). STEVENSON'S FEE WILL NOT BE CONTINGENT; HE WILL CHARGE A FLAT FEE FOR THE LEGAL WORK INVOLVED REGARDLESS OF THE AMOUNT OF RECOVERY EFFECTED, OR WHETHER OR NOT THERE IS RECOVERY.

10. I UNDERSTAND THAT THE DOJ AT THIS POINT DOES NOT COMTEMPLATE SENDING TO HONG KONG ANYONE WITH AUTHORITY TO COORDINATE AND DIRECT THIS INVESTIGATION, BUT HAS BEEN INFORMED THAT A JAG OFFICER IS ON THE SCENE. THIS JAG OFFICER IS ASSIGNED TEMPORARILY FROM SAIGON TO PROVIDE LEGAL ADVICE TO CID INVESTIGATORS ONLY UNTIL THE DIRECTION OF THIS CASE IS CENTRALIZED, PRESUMABLY IN DOJ.

11. I HAVE EXPLAINED THE DETAILS OF THIS CASE IN THIS CABLE TO EMPHASIZE ITS COMPLEXITY , ITS LEGAL PROBLEMS, AND THE NEED FOR CLOSE COORDINATION IN HONG KONG LEST ONE OF THE ACTIONS IN PROGRESS PREJUDICE THE OTHER TWO ACTIONS.

12. IT SEEMS TO ME TO BE EXTREMELY DIFFICULT, WHAT WITH THE COMPLEXITY OF THE CASE, THE COMMUNICATIONS DIFFICULTIES, THE NUMBER OF AGENCIES INVOLVED AND THE TIME DIFFERENCES, BETWEEN HONG KONG AND WASHINGTON, D. C. FOR THIS CASE TO BE DIRECTED FROM WASHINGTON EVEN IF THERE WERE ONE OFFICER OR ATTORNEY IN CONTROL, WHICH AT THIS POINT THERE APPARENTLY IS NOT. I STRONGLY URGE THAT COORDINATION AND DIRECTION OF THIS CASE BE QUICKLY CENTRALIZED, AND THAT CONSIDERATION BE GIVEN TO ASSIGNING A DOJ ATTORNEY TO TAKE CHARGE OF THE INVESTIGATION IN HONG KONG OR TO ASSIGN THE JAG ATTORNEY PRESENT HERE ALREADY TO DIRECT THE CASE, OF COURSE IN CONSULTATION WITH SOME SPECIFIC INDIVIDUAL OR DIVISION OF DOJ. THE LATTER COURSE WILL, OF COURSE, REQUIRE ESTABLISHMENT OF SOME TYPE OF DIRECT COMMUNICATIONS CHANNEL.

13. I FURTHER UNDERSTAND THAT THE DOJ CIVIL DIVISION WANTS ASSURANCES PRIOR TO THE RETENTION OF A LOCAL ATTORNEY THAT A CIVIL ACTION TO FREEZE THE EMBEZZLED FUNDS WILL BE SUCCESSFUL. AS NOTED ABOVE, NO SUCH ASSURANCE CAN BE MADE UNTIL AND UNLESS WE GAIN ACCESS TO THE SUBJECT'S BANK RECORDS. IF THE HONG KONG POLICE DO NOT HAVE JURISDICTION TO OBTAIN A SEARCH WARRANT TO EXAMINE SIMMONS RECORDS THE ONLY LIMITED OFFICIAL USE

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PAGE 04 HONG K 02879 02 OF 02 200528Z

AVENUE FOR GAINING ACCESS TO THESE RECORDS IS VIA A CIVIL ACTION, AND OF COURSE FOR THAT THE LOCAL ATTORNEY MUST BE RETAINED. BECAUSE OF THE POSSIBILITY OF DIFFUSION OF EMBEZZLED FUNDS THROUGH SEVERAL HONG KONG ACCOUNTS, THE NUMBER OF ACTIONS, AND CONSEQUENTLY LEGAL WORK INVOLVED, WOULD AFFECT THE PROSPECTS FOR SUCCESS IN FREEZING OF FUNDS , AND INCREASE THE LEGAL FEES INVOLVED.

14. CID INVESTIGATORS ARE STILL UNDER A STANDDOWN ORDER SO THEY ARE NOT PROCEEDING WITH ANY FURTHER INVESTIGATION IN HONG KONG. THE HONG KONG POLICE ARE RESPECTING THIS INSTRUCTION FROM WASHINGTON AND WILL NOT PROCEED WITH FURTHER INVESTIGATION, INCLUDING THE OBTAINING OF SEARCH WARRANTS TO EXAMINE BANK RECORDS WHEN AND IF THEY ARE INFORMED THAT THEY DO HAVE JURISDICTION, UNTIL THE STANDDOWN ORDER FOR CID IS LIFTED.

15. AGAIN, I URGE THAT COORDINATION AND DIRECTION OF THIS MATTER BE SETTLED QUICKLY AT WASHINGTON SO THAT WE CAN PROCEED.

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Message Attributes

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